The Board Members of Koperasi Koperkasa Bhd v Sajali bin Ojek & Ors

HIGH COURT (KUCHING) — ORIGINATING MOTION NO 25–02 OF 2007-II
ABDUL AZIZ ABDUL RAHIM J
14 JANUARY 2008

Civil Procedure — Appeal — Fact, finding of — Interference by appellate court — Judicial appreciation of evidence — Contemporaneous documents

Civil Procedure — Appeal — Originating motion — Against decision of tribunal — Whether appellate interference warranted

Unincorporated Association — Societies — Co-operative society — Elections — Whether null and void — Whether dispute on first election ought to be referred to Registrar General — Co-Operative Societies Act 1993 ss 82(1) & 83(7)

This was the appellant/defendant's appeal under s 83(7) of the Co-Operative Societies Act 1993 ('the Act') against the award given by the Co-Operative Societies Tribunal ('tribunal') in respect of two references of disputes which were referred to the tribunal for its decision under s 82(1) of the Act. The disputes arose out of the complaint on the propriety of the election process of the Area General Meeting ('MAK–1') on 13 May 2006 ('first meeting') to elect the delegates to the 55th and 56th Delegates' Annual General Meeting. The appellant had, upon nullifying and cancelling the first meeting, reconvened a second MAK–1 meeting on 25 June 2005 for the same purpose ('second meeting'). However, the respondents/applicants claimed that the second meeting was void. In both the references, the tribunal decided in favour of the respondents. Hence, this appeal by the appellant against the decision. The appellant contended that in arriving at its decision the tribunal had failed to consider sufficiently or at all the evidence and material adduced by the appellant as to the irregularities and the shortcomings of the electoral process at the first meeting.

Held, allowing the appeal:

(1) A closer scrutiny of the notes of proceedings and the various reports

filed upon receiving the numerous complaints on the election process at the first meeting, and exhibited in the appellant's affidavit in support of this appeal, showed abundance of evidence pointing to the chaotic situation and confusion that prevailed at the election of delegates at the first meeting (see para 36).

(2) The evidence was never judicially appreciated or subjected to close scrutiny by the tribunal. Had it done so, it would have shown to the tribunal the probability of the truth of the complaints that the election was not conducted in a proper and orderly manner (see para 37).

(3) The various reports filed in this case, and exhibited in the appellant's affidavit in support of the motion, were contemporaneous documents. They were fresh recollections of events that took place at the voting process at the first meeting by the officials and the members of the co-operative society that attended the meeting and participated in the election process. These reports ought to be given its due evidential weight and value and a proper judicial appreciation; not merely to gloss over it as was did by the tribunal. There was no explanation or reason given by the tribunal as to why it accepted or believed the report (see para 38).

(4) Under the rules of proceedings, the tribunal could admit any evidence which would be inadmissible under the ordinary civil trial or criminal trial. Thus by admitting the correspondences complained of by the appellant, the tribunal could not be said to have been biased against the appellant in its decision. Nevertheless, this did not mean that by relying and admitting those correspondences the tribunal was discharged from its judicial duty to consider and weigh the evidence and make a proper judicial assessment of them (see para 41).

(5) The dispute in this case was a dispute among the members touching on the election of the delegates and the conduct of the general meeting at which the election was held. Therefore, the dispute fell within the ambit of sub-s (1) of s 82 of the Act (see para 43).

(6) Based on the facts and the circumstances of the case, the appellant had exceeded its authority when it decided to annul the result of the first meeting as to the election of delegates and to proceed with the second meeting (see para 44).

[Bahasa Malaysia summary

Ini adalah rayuan perayu/defendan di bawah s 83(7) Akta Pertubuhan Koperasi 1993 ('Akta tersebut') terhadap award yang diberikan oleh Tribunal Pertubuhan Koperasi ('tribunal') berkenaan dengan dua rujukan pertikaian yang telah dirujuk kepada tribunal untuk keputusannya di bawah s 82(1)

Akta tersebut. Pertikaian-pertikaian tersebut berbangkit dari aduan berkenaan dengan tatasusila proses pemilihan Mesyuarat Agung Kawasan ('MAK–1') pada 13 Mei 2006 ('mesyuarat pertama') untuk memilih wakil-wakil ke Mesyuarat Agung Tahunan Delegasi-Delegasi ke 55 dan 56. Perayu telah, selepas membatalkan mesyuarat pertama, mengadakan semula mesyuarat MAK–1 yang kedua pada 25 Jun 2005 untuk tujuan yang sama ('mesyuarat kedua'). Walau bagaimanapun, responden-responden/pemohon-pemohon menyatakan bahawa mesyuarat kedua tidak sah. Dalam kedua-dua rujukan, tribunal memutuskan memihak kepada responden-responden. Maka rayuan ini oleh perayu terhadap keputusan tersebut. Perayu menghujah bahawa dalam membuat keputusannya, tribunal telah gagal untuk mempertimbangkan dengan secukupnya atau secara keseluruhannya, keterangan dan material yang dikemukakan oleh perayu berkaitan dengan ketidakaturan dan kelemahan-kelemahan proses pemilihan dalam mesyuarat pertama.

Diputuskan, membenarkan rayuan:

(1) Penelitian terperinci nota prosiding dan pelbagai laporan yang telah difailkan setelah menerima banyak aduan terhadap proses pemilihan pada mesyuarat pertama dan telah diekshibitkan di dalam afidavit sokongan perayu dalam rayuan ini, membuktikan terdapat banyaknya keterangan yang menunjukkan kepada situasi kelam-kabut dan kekeliruan yang telah berlaku di pemilihan delegasi-delegasi semasa mesyuarat pertama (lihat perenggan 36).

(2) Keterangan tersebut tidak mendapat pertimbangan kehakiman atau tertakluk kepada pemilihan terperinci oleh tribunal. Sekiranya ia dilakukan sedemikian, ia dapat menunjukkan kepada tribunal kemungkinan kebenaran aduan-aduan tersebut yang mana pemilihan tidak dijalankan secara betul dan teratur (lihat perenggan 37).

(3) Pelbagai laporan yang telah difailkan dalam kes ini dan diekshibitkan di dalam afidavit sokongan usul perayu adalah dokumen-dokumen terkini. Ianya adalah pengumpulan semula peristiwa baru yang berlaku semasa proses pengundian di mesyuarat pertama oleh pegawai-pegawai dan ahli-ahli persatuan koperasi yang hadir ke mesyuarat dan mengambil bahagian dalam proses pemilihan. Laporan-laporan tersebut perlu diberikan penekanan dan nilai keterangan yang sepatutnya dan penghargaan kehakiman yang sewajarnya; bukan hanya menutupnya seperti yang telah dilakukan oleh tribunal. Tiada penjelasan atau alasan diberikan oleh tribunal berkenaan sebab ia menerima atau mempercayai laporan tersebut (lihat perenggan 38).

(4) Di bawah tatacara prosiding, tribunal boleh menerima apa–apa keterangan yang mana mungkin tidak diterima di bawah perbicaraan sivil atau jenayah yang biasa. Oleh itu dengan menerima surat-menyurat aduan perayu, tribunal tidak boleh dikatakan berat sebelah terhadap perayu dalam keputusannya. Walau bagaimanapun, ini tidak bermaksud bahawa dengan bergantung dan menerima surat-menyurat tersebut tribunal telah terlepas dari tanggungjawab kehakimannya untuk mempertimbangkan dan menimbang keterangan dan membuat satu penilaian kehakiman yang betul (lihat perenggan 41).

(5) Pertikaian dalam kes ini adalah pertikaian di antara ahli-ahli yang berkaitan dengan pemilihan delegasi-delegasi dan cara mesyuarat agung semasa pemilihan diadakan. Oleh itu, pertikaian tersebut adalah dalam lingkungan sub-s (1) s 82 Akta (lihat perenggan 43).

(6) Berdasarkan fakta dan keadaan kes, perayu telah melampaui kuasanya apabila ia memutuskan untuk membatalkan keputusan mesyuarat pertama pemilihan delegasi-delegasi dan meneruskan dengan mesyuarat kedua (lihat perenggan 44).]

Notes

For a case on originating motion, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) para 1365.

For cases on co-operative society, see 12 *Mallal's Digest* (4th Ed, 2005 Reissue) paras 2679–2695.

For cases on finding of facts, see 2(1) *Mallal's Digest* (4th Ed, 2007 Reissue) paras 898–1004.

Cases referred to

Bernard Leow Kim Hoon v Malayan Airways/Qantas Empire Airways Local Employees Union & Ors [1967] 1 MLJ 60 (refd)

Hamit bin Matusin & Ors v Penguasa Tanah dan Survei & Anor and another appeal [2006] 3 MLJ 289 (refd)

Tanjong Puteri Johore State Election Petition: Abdul Razak bin Ahmad, Re v Datuk Md Yunos bin Sulaiman & Anor [1988] 2 MLJ 111 (refd)

Legislation referred to

Co-Operative Societies Act 1993 ss 2, 36, 39, 42(a), 82(1), (2), (3), 83(1), (5)(e), (7)

Mohd Ivan Hussein (Ivan Hussein Advocates) for the appellant.

Azizi Morni (Chen Chieng Ning & Azizi Advocates) for the respondents.

Abdul Aziz Abdul Rahim J:

[1] This is the appellant's appeal under s 83(7) of the Co-Operative Societies Act 1993 ('the Act') against the award given by the Co-Operative Societies Tribunal ('tribunal') on 10 April 2007 in respect of two references of disputes which were referred to the tribunal for its decision under s 82(1) of the Act. For ease of reference in this judgment the appellant will be referred to as 'appellant/defendant' and the respondents will be referred to as 'respondents/applicants'.

[2] The first reference is Reference No T 126 of 2006, which is a dispute between the first and second respondents/applicants and the appellant/defendant. The second reference is Reference No T 127 of 2006 between the third respondent/applicant and the appellant/defendant. In the two references, the tribunal decided in favour of the respondents/applicants herein. The appellant/defendant now appeal against that decision to have it set aside or reversed.

[3] In the two references referred to above, the respondents/applicants claimed that the notice of Area General Meeting dated 30 May 2006 which was held on 25 May 2006 for the re-election of delegates is void. The respondents/applicants also claimed that the Mesyuarat Agung Kawasan 1 ('MAK–1') held on 13 May 2006 and the successful candidates numbering 65 elected and announced by the election committee at that meeting are the elected delegates for Kawasan 1 to attend the Delegates Annual General Meeting. Further, the respondents/applicants claimed that the declaration by the election committee on 14 May 2006 of the 65 winning candidates at the MAK–1 has never been annulled or disputed whether on the day of the election itself or being challenged in any legal proceedings.

[4] The chairman of the tribunal had prepared a written ruling of its decision and it has been filed as encl 16 in the court file.

THE FACTS

[5] The Koperasi held a MAK–1 on 13 May 2006 ('first meeting') at the Stadium Perpaduan Sarawak. About 11,000 people attended the first meeting. One of the main agenda of the first meeting was to elect delegates to Mesyuarat Agung Perwakilan Tahunan ke 55 dan 56. That was accordingly carried out. The result on the successful candidates elected as delegates to the Mesyuarat Agung Perwakilan Tahunan ke 55 dan 56 was announced the next day on 14 May 2006. The tribunal found two versions of the announcements respecting the successful candidates. The respondents/applicants' version is

that the successful candidates were announced on that day. The appellant/defendant's version is that on that day the successful candidates were not announced; what were announced then were the total votes casted at the election of the delegates. In other words the contention of the appellant/defendant was that the result of the election was never announced on that day. The appellant/defendant also alleged that there were fighting and confusion at and during the election and voting process and therefore contends that the election held on 13 May 2006 and the candidates elected and declared successful are null and void and unlawful. Subsequently the appellant/defendant reconvened a second MAK–1 on 25 June 2005 ('second meeting') for the same purpose that is to elect delegates to the Mesyuarat Agung Perwakilan Tahunan ke 55 dan 56.

[6] In dealing with the issue arising from the above facts, the tribunal proceeded to determine whether the appellant/defendant has the power to nullify and cancel the first meeting held on 13 May 2006 and reconvene a second meeting on 25 June 2006.

[7] In its ruling, the tribunal found that on the evidence adduced by the respondents/applicants, it was obvious that a decision was made on 14 May 2006 and the successful candidates were announced. The tribunal also found that the evidence by the appellant/defendant before it was inconsistent with the facts; and concluded that if there were cheating and confusion at the polling of votes surely the polling could not be conducted in an orderly fashion and surely the announcement of the result of the election would not be able to be made on 14 June 2006. The tribunal also concluded that the appellant/defendant had the control of the election or polling process. If there was confusion or cheating at that time, the appellant/defendant then could have stopped it without letting the counting of votes to proceed on 14 June 2006. Therefore according to the tribunal, the election process was orderly conducted and the announcement of the successful candidates was made by the chairman of the first meeting of MAK–1 herself on 14 June 2006.

[8] As to the authority of the appellant/defendant to nullify the result of the election held during the first meeting of MAK–1 on 13 and 14 June 2006, the tribunal found that the appellant/defendant had none under the relevant provisions of the law. The tribunal expressed the view that the proper course for the appellant/defendant, if it discovered any doubts, irregularities or abuse of powers at the first meeting of MAK–1 held on 13 June 2006, is to refer the matter to the tribunal for determination. By nullifying the result of the election the tribunal finds that the appellant/defendant herein had exceeded its powers under the law. The tribunal refrains from expressing any views on the conduct of the second meeting of MAK–1 held by the appellant/defendant herein on 30 June 2006 after nullifying the first meeting

of MAK–1. The final result of the tribunal's finding is therefore to allow the application by the respondents/applicants herein to declare that the second meeting of MAK–1 held by the appellant/defendant herein on 30 June 2006 is void and unlawful and that the election of the 65 candidates as delegates at the first meeting of MAK–1 held on 13 June 2006 is valid and was never nullified or disputed.

[9] Before me and in this appeal, by way of originating motion, the appellant/defendant contends that what was announced on 14 May 2006 was merely the count of the ballot papers received by the candidates and not the winning result of the election. The appellant/defendant contends that in arriving at its decision, the tribunal had failed to consider sufficiently or at all the evidence and material adduced by the appellant/defendant as to the irregularities and shortcomings of the electoral process on 13 May 2006 and the procedural requirements that had to be fulfilled in the election process.

[10] In respect of these contentions it is necessary to refer to some of the provisions of the by-laws or Undang-Undang Kecil ('by-laws') of the Koperasi Koperkasa Berhad ('KKB') that are relevant for the purpose and the KKB's Aturan Mesyuarat Agung Kawasan ('AMK') as well as the KKB's Aturan Mesyuarat Agung Perwakilan ('AMP'). Before going into the rules relating to the election of the delegates to attend the Annual Delegates' Meeting, a brief background of KKB (obtained from the appellant's affidavit in support of the motion affirmed by Awang Marzuki bin Awang Daud, the secretary to the appellant, on 27 April 2007 and which is not generally in dispute) would be helpful to understand the rules in their proper context.

[11] KKB is a co-operative society registered under the Co-Operative Societies Act 1993 whose members are intended to be from government servants residing in Sarawak. Indirect membership was later extended to the staff and employees of KKB. The KKB has branches throughout Sarawak and the branches are grouped into three regions — first region consists of Kuching, Serian, Kota Samarahan and Sri Aman; second region — covers Sibu, Sarikei, Mukah and Kapit; and the third region consists of Miri, Bintulu, Limbang and Lawas. For our case the relevant region is the first region.

[12] In accordance with by-law 24 of KKB by-laws (effective from 19 June 2005) the highest executive power of KKB is vested with the Delegates' Annual General Meeting which is held once a year and which is convened in accordance with s 36 of the Act. The Delegates' Annual General Meeting is attended by the delegates elected at the Annual General Meeting for the respective region. At the Delegates' Annual General Meeting some of the delegates attending would be elected to sit on the Lembaga or Board of KKB

whose responsibility is to manage the affairs of KKB as spelt out in s 2 of the Act. The Board is established pursuant to s 42(a) of the Act. A

[13] On 13 May 2001, and in accordance with the KKB by-laws, the first region held its MAK–1 with the purpose of, among other things, electing delegates to represent the region at the coming Delegates' Annual General Meeting, which has been scheduled at the end of June 2006. Each elected delegate at the Annual General Meeting of a region will hold office, under the KKB rules, for two years unless re-elected for another term. B

[14] At this juncture, it must be noted that the complaint before the tribunal is not directed at legality or lawfulness of MAK–1 meeting held on 13–14 June 2006 itself. In other words there was no complaint as to whether the MAK–1 meeting was improperly or unlawfully convened. The complaint was directed only at the propriety of the election process that was carried out at MAK–1 meeting on 13–14 June 2006 to elect the delegates for the first region to represent the region at the KKB's Delegates' Annual General Meeting. C D

[15] I will now examine the complaint as to the procedures adopted at the first region annual meeting with regard to the election of delegates to represent the first region at the coming Delegates' Annual General Meeting. The relevant KKB rules for this purpose is KKB AMK which have been approved by the 54th Delegates' Annual General Meeting which was convened on 18–19 June 2005; in particular Rules 11 and 12A; 12B and 12C. E F

[16] In accordance with Aturan 4 of the said AMK, a chairperson and secretary of the meeting for 13 May 2006 would be elected from those present. In this case one Puan Rukayah bte Dawi was elected to be the chairperson for that meeting. She testified before the tribunal as SP1 for the applicant. G

[17] Aturan 12A describes the election process for the election of delegates at the Regional Annual General Meeting. Briefly it may be described as follows: Once a member has registered his attendance, he is given an attendance registration card. This card is then exchanged for a ballot paper at the election centre and upon receiving the ballot paper, the member is requested to cast his vote by marking the ballot paper to indicate the candidate he elects as his delegate to attend the Delegates' Annual General Meeting. Once this is done, the member is then directed to a ballot box where he has to deposit the ballot paper which he had marked into the ballot box. When he has done that, the member is given a meeting allowance voucher which he has to complete and sign. Once that is completed, he then H I

proceeds to the allowance payment area to hand over the meeting allowance voucher and claims his meeting allowance.

[18] Aturan 12B provides for the vote counting process. Under this rule, the Board is given power to decide on the counting process. However in our case, Puan Rukayah ('SP1') had testified before the tribunal that the counting process was done through a computer system. According to her testimony (see notes of proceedings in exh AM–10 of appellant's affidavit in support of the motion) the ballot paper is inserted into a machine and the list of candidates appears on a screen together with the result — presumably the number of votes each candidate has got would appear against the name of the respective candidate.

[19] Aturan 12C provides that after the process of counting the votes has been completed the election chairperson shall announce and read the result of the election to the meeting.

[20] Puan Rukayah ('SP1') testified before the tribunal that after the completion of the counting process she was asked by the chairman of the Board of the Society to announce the result. From the notes of proceedings before the tribunal, it appears that SP1 made two announcements. The first announcement she said, she announced the candidates according to the total vote each of them had obtained; and the second announcement, she announced the name of the successful candidates only. In her own words she said:

> Keputusan pemilihan dibuat hasil daripada sistem komputeran. Saya baca keputusan dengan urusan [(sic) — urutan?] nombor, jumlah undi yang mereka terima. Pada keputusan kedua saya hanya umum nama calon yang menang saja (the words in square bracket are mine). [Notes of proceedings exh AM–10 at p 3]

[21] SP1 also testified before the tribunal that the election was conducted at 3pm and Encik Sumber bin Dollah, was appointed as the election chairman. She further testified that the voting was orderly and nothing untowardly happened. She also told the tribunal that there was never any objection to the election result or the way the election was conducted from the members of the election committee on that material day. In her own words she said:

> Pengundian dijalankan dengan teratur dan tiada insiden buruk berlaku hingga keputusan diumum. Tiada sebarang bantahan daripada AJK Pemilihan pada hari itu (notes of proceedings exh AM–10 at p 4).

[22] She also said in her testimony, at p 4 of the notes of proceedings exh AM–10 that:

> Kami telah diminta untuk tandatangani senarai keputusan iaitu saya, Tuan Haji Joni, Pengerusi dan Encik Sumber bin Dollah, Pengerusi Jawatankuasa Pemilihan dan Tuan Haji Piee, Pengerusi Audit Dalaman.

[23] From the perusal of exh AM–2 ikatan aduan ('bundle of complaints') exhibited in the appellant/defendant's affidavit in support of the motion, it obvious that a day after the result of the election was announced, members of KKB who attended the MAK–1 first meeting started to write in to the Pengarah Jabatan Pembangunan Koperasi Sarawak, Pengurus KKB, the Secretary of KKB complaining about the irregularities at the election process. Some of the members had also lodged police reports as to the irregularities and these police reports are also exhibited in exh AM–2.

[24] It is not disputed that SP1 is one of the successful candidates in the election held at MAK–1 on 13 June 2006. She admitted so under cross-examination before the tribunal. Therefore her evidence must be scrutinised critically. At the same time it is interesting to note that Encik Sumber bin Dollah, whom SP1 had said in her testimony that when asked whether any objection received or made before the announcement of the result and to which the answer was none, had given evidence before the tribunal for the appellant/defendant and in direct contradiction with what was said by SP1. According to SP1 also, in her re-examination, Encik Sumber bin Dollah was the Pengerusi Jawatankuasa Pengundian and he was present when SP1 announced the election result. But this fact, seems on the evidence, before the tribunal to be doubtful. SP1 testified before the tribunal that Encik Sumber bin Dollah, Pengerusi Jawatankuasa Pemilihan was present when she announced the result of the election at MAK–1 first meeting. But Encik Sumber bin Dollah in his testimony as SR1 for the appellant/defendant had told the tribunal that he was the secretary and member of the Board of KKB. He co-ordinated the whole MAK–1 meeting. He is not qualified to be appointed as Pengerusi Pemilihan. That means he was not the Pengerusi of the Jawatankuasa Pengundian on 13 May 2006 at the MAK–1 first meeting. This fact is corroborated by documentary evidence of a report by Pengerusi Jawatankuasa Pengundian dated 16 May 2006 exhibited in exh AM–3. The report was signed by one Ismail bin Abdul Rani, who had stated in the first paragraph of the report that he made the report in his capacity as Pengerusi Jawatankuasa Pengundian Perwakilan Zon 1.

[25] Under Aturan 12C AMK, the duty to announce the election results is conferred upon the chairperson of the election committee. But in this case it is obvious on the evidence adduced by the respondents/applicants this was

not the case. As testified by SP1, she herself, as the chairman of the first MAK–1 meeting, had announced the result as directed by the chairman of the Lembaga of KKB. This is obviously not in accordance with the AMK and the election rules of KKB. Therefore I think I agree with the appellant/defendant that the tribunal was wrong in concluding that the result of the election was announced that day.

[26] Some of the complaints (either in the letters or in the police reports lodged) that can be seen in exh AM–2 are that some of the members who had registered for the first MAK–1 meeting were doubtful (see police report at p 1 of exh AM–2); there was no opportunity to vote due to shortage of ballot papers (see letter to Pengurus Jabatan Pembangunan Koperasi Sarawak at p 5 of exh AM–2); there was confusion at the election and the situation was out of control or chaotic (see letter to Pengurus KKB dated 16 May 2005 at p 7 of exh AM–2). There was also complaint about missing ballot papers, empty ballot boxes; ballot boxes not properly secured or guarded during the election process; and marked and blank ballot papers scattered around the voting area — see pp 55, 33 and 40 respectively of exh AM–2. As can be seen in some of the complaints exhibited in exh AM–2, there was also complaint of that some members that cannot cast their votes were told that the election committee had ran out of ballot papers.

[27] The chaotic state of, and the confusion that had prevailed during, the election process is also evident from the *Laporan Pemilihan Perwakilan Zon 1, 13 Mei 2006* by Ismail bin Abdul Rani, the chairman of the Jawatankuasa Pengundian who was also the Penolong Pengurus Besar KKB. This report is exhibited as exh AM–3 in the appellant/defendant's affidavit supporting the motion and it is accompanied by other reports from the officials that managed the election process. What is interesting to note is that the *Laporan Pergerakan Kertas Undi MAK Zon 1, 13 Mei 2006* at p 17 of exh AM–3 stated that 16000 ballot papers were printed but only 15934 were available for distribution because, after checking, it was found that 66 ballot papers were spoilt or cannot be used. Out of the 15934 ballot papers available for distribution only 8827 were actually distributed and the remaining 7107 ballot papers were not distributed. The figure 8827 is obtained after taking into consideration that out of the total numbers of ballot papers distributed 7636 were returned and machine readable, 637 were spoilt votes, 39 were returned but not readable by the machine and 515 ballot papers distributed were never returned.

[28] Although the figure 7107 of the ballot papers not distributed by itself does not mean that the election or its result is suspected or unreliable, it does support the complaint that some of the members who were eligible to vote at the first meeting of MAK–1, and had wanted to vote, did not get the ballot

papers to cast their votes at the election. This is considering that about 11,000 members attended the first MAK–1 meeting. The above facts as I have alluded to were made available to the tribunal for its consideration. However the tribunal apparently had not given its due consideration to these facts when it concluded that the election was properly conducted and finds nothing wrong with it.

[29] From the exhibits in the appellant/defendant's affidavit in support, it is also obvious that the complaints by the members of KKB as to their dissatisfaction with the manner the election of delegates was conducted at the first MAK–1 meeting were appreciated by the Board or management of KKB. This is apparent when on 17 June 2006 the secretary to KKB wrote to Pendaftar Koperasi Sarawak, Jabatan Pembangunan Koperasi Sarawak requesting that the Delegates' Annual General Meeting which was scheduled at the end of June 2006 be deferred to July 2006 to enable Zon 1 to conduct a fresh election of delegates to that meeting following the many complaints on the election and its result held at the first MAK–1 meeting. This letter is exhibited in the ikatan dokumen responden exh AM–4, at p 1 of the appellant/defendant's affidavit in support of the motion. Also sent together with the letter were the complaints and the various reports by the officials.

[30] In its reply (at pp 2 and 3 of exh AM–4) to the letter by the secretary to KKB, the Pendaftar Koperasi, Jabatan Pembangunan Koperasi Sarawak to KKB that the Board had no authority under the law to declare the first MAK–1 meeting as null and void and also that the first MAK–1 meeting was called and convened in accordance with the provisions of the Act, the by-laws and the rules. Therefore there is no reason for the Board to re-convene a fresh MAK–1. The registrar also advised the appellant/defendant that the Board should not accept the complaints at its face value; and that if aggrieved party should refer the matter to the tribunal for decision.

[31] Against the advice of the registrar, appellant/defendant set aside the election result of the first MAK–1 and the secretary to KKB proceeded to issue notice of the second MAK–1 meeting scheduled on 25 June 2006 and the registrar was informed accordingly vide letter dated 25 May 2006 — see pp 5 and 4 respectively of exh AM–4. The purpose of the meeting was to carry out Agenda 9 of the first MAK–1 which was the election of delegates to the Delegates' Annual General Meeting. That was the only agenda and purpose of the meeting.

[32] Upon being notified of the Board of KKB's intention to reconvene the MAK–1 meeting on 25 June 2006 for the purpose of carrying out agenda 9, the Registrar of Koperasi Sarawak vide a letter dated 8 June 2006 (at p 6 of exh AM–4) once again warned KKB not to proceed with the proposed

meeting and at the same time reminded the Board of KKB that there is no provision in the Act or the regulations or KKB by-laws or KKB AMK. In the same letter the registrar advised the secretary to KKB to refer any dispute to the tribunal and that the Delegates' Annual General Meeting must be convened before the end of June 2006 in accordance with s 39 of the Act. The section provides that every registered co-operative shall hold its Annual General Meeting of members or its delegates not later than six months after the end of the co-operative financial year. In this regard, KKB by-laws 74 provides that KKB financial year ends on 31 December every year.

[33] As I have said that the Board ignored the warning by the Registrar of Koperasi Sarawak; instead went ahead to hold the second MAK–1 meeting for the purpose of electing delegates to represent the first region at the Annual Delegates Meeting. As a result of the second MAK–1 meeting, KKB was confronted with two groups of delegates to represent it at the annual delegates meeting: one group was elected at the first MAK–1 meeting and the second group was elected at the second MAK–1 meeting. It is this situation that prompted the respondents/applicants (who were from the first group of elected delegates) to refer the matter to the tribunal.

[34] Though as a matter of principle an appellate court is slow to interfere with the findings of fact arrived at by the trial court whom the law entrusts the primary task of evaluating the evidence, it will intervene with such findings of fact if there was no judicial appreciation by the trier of fact of the evidence adduced at the trial and that the evidence that was before it could not be sufficient to explain or justify his conclusion — *Hamit bin Matusin & Ors v Penguasa Tanah dan Survei & Anor and another appeal* [2006] 3 MLJ 289.

[35] Admittedly in this case, the tribunal did make a finding of fact that the election was conducted in an orderly manner and there was no chaos or confusion during the election process. But unfortunately in my opinion such finding is not supported by the evidence unveiled before it.

[36] A closer scrutiny of the notes of proceedings and the various reports filed at the request of the Board upon receiving the numerous complaints on the election process at the first MAK–1 meeting, and exhibited in the appellant/defendant's affidavit in support of this appeal, shows abundance of evidence pointing to the chaotic situation and confusion that prevailed at the election of delegates at the first MAK–1 meeting. For example a report by one Ismail bin Abdul Rani, one of the election officials, shows that the names on of the registration cards returned did not match with any of the names listed in the attendance records of members eligible to attend. This shows that those not eligible to attend had somehow found their ways into the meeting and

were allowed to cast votes. There is also a separate and independent assessment of the climate during election at MAK–1 given by RELA who has been engaged to provide security and control at the meeting. The report is found at p 49 of exh AM–3 and it revealed a situation which was chaotic and out of control. Further evidence of unruliness and out of control situation is found in a claim by Syarikat Mawarkanopi, the company that rented out the canopies and furniture to KKB for the purpose of the first MAK–1 meeting, for damage to its furniture. This claim is exhibited at exh AM–11.

[37] These evidence were never judicially appreciated or subjected to close scrutiny by the tribunal. Had it done so, it would have shown to the tribunal the probability of the truth of the complaints that the election was not conducted in a proper and orderly manner. In my view, a proper election is one which entails public participation in selecting representatives of their choice through a process which not only guarantees absolute fairness, secrecy, impartiality and regularity but which also encompasses public trust and confidence in the manner in which the process is carried out – *Re Tanjong Puteri Johore State Election Petition: Abdul Razak bin Ahmad v Datuk Md Yunos bin Sulaiman & Anor* [1988] 2 MLJ 111. If there are irregularities during the election, the court would intervene and grant relief to annul the tainted election result — *Bernard Leow Kim Hoon v Malayan Airways/Qantas Empire Airways Local Employees Union & Ors* [1967] 1 MLJ 60. In *Re Tanjong Puteri*'s case, it was held that the numerous errors, mistakes or irregularities and the unforeseen and improper movement of the ballot boxes, considered collectively, were sufficient to show that the election was not conducted in accordance with the election laws and therefore was void.

[38] The various reports filed in this case, and exhibited in the appellant/defendant's affidavit in support of the motion, are contemporaneous documents. They are fresh recollections of events that took place at the voting process at the first MAK–1 meeting by officials and the members of the co-operative society that attended the meeting and participated in the election process. These reports ought to be given its due evidential weight and value and a proper judicial appreciation; not merely to gloss over it as was done by the tribunal. There is no explanation or reason given by the tribunal as to why it did accept or believe this report. In my view considering the numerous complaints and the seriousness of the issue, the tribunal should examine the complaints in the reports critically and provide explanation why it could not believe or accept them as the probable truth.

[39] Having regards to the evidence in this case as found in the affidavit in support of the motion, I am satisfied that there were irregularities in the conduct of the election at the first MAK–1 meeting for the election of the

delegates to the Annual Delegates' General Meeting which has been scheduled to be held by the 30 June of 2006. I therefore rule that the election was void and irregular.

[40] Before I leave this issue I would like to comment, in passing, the complaint by the appellant/defendant that the tribunal had came to its conclusion by taking into account matters which it ought not to have taken into account as raised in the appellant/defendant's grounds of application. Paragraph (e) of sub-s (5) of s 83 of the Act provides that, 'notwithstanding any written law relating to evidence, admit any evidence, whether written or oral, which might be inadmissible in civil or criminal proceedings'. These provisions give the tribunal a wide latitude to admit any evidence on which to base its decision. As such the complaint by the appellant/defendant that the tribunal had taken into account matters which it ought not to do so is not a ground to set aside the tribunal's decision.

[41] With regard to the appellant/defendant's contention that the tribunal had not given sufficient regard or at all to the rule against bias when it took into account or adopted the contents of a series of correspondences between KKB and Jabatan Pembangunan Koperasi Malaysia, Kuching Branch, which the appellant/defendant alleged had pre-judged the issues, the same argument applies. Under the rules of proceedings applicable to the tribunal, the latter can admit any evidence which would be inadmissible under an ordinary civil trial or criminal trial. Thus by admitting the correspondences complained of by the appellant/defendant, the tribunal cannot be said to have been biased against the appellant/defendant in its decision. Nevertheless, this does not mean that by relying and admitting those correspondences the tribunal is discharged from its judicial duty to consider and weigh the evidence and made a proper judicial assessment of them. The fault of the tribunal here is that it did not properly assess the evidence ie the correspondences and the views expressed in the correspondences independently and impassionately in order to arrive at an objective finding of its own in the light of the other surrounding circumstances and evidence adduced before it.

[42] On the issue whether the Board has the authority or power to annul the result of the election of the delegates elected during the first MAK–1 meeting, I agree with the finding of the tribunal that the Board has no such power. Under s 82 of the Act, any dispute touching the constitution, by-laws, election of officers, conduct of general meetings or management or business of a registered co-operative society arises among members, between members and the Board shall be referred to the Registrar-General for decision. When referred with such disputes, then under sub-s (3) of the same section

of the Act, the Registrar-General may decide the disputes himself or refer the dispute to an arbitrator or arbitrators for disposal or required the parties to refer the disputes to a court.

[43] The dispute in this case is a dispute among the members touching on the election of the delegates and the conduct of the general meeting at which the election was held. Therefore in my opinion the dispute comes within the ambit of sub-s (1) of s 82 of the Act; and therefore should have been referred to the Registrar-General for decision. On the evidence it is not disputed that in its effort to resolve the dispute, the secretary of KKB had written to the Pengarah Jabatan Pembangunan Koperasi at Kuching requesting that a new election be held but it was turned down. I think that was the mistake. On receiving the request and on being informed of the dispute, the Pengarah should have referred the matter to the Registrar-General for his decision instead of issuing a directive of his own to KKB not to proceed with the second MAK–1 meeting. However after the establishment of the tribunal under s 83(1) of the Act any dispute under s 82(1) and (2) of the Act shall be referred to the tribunal directly. Here again I think the Pengarah at Kuching had made a mistake. It could have been a different story if the Pengarah, upon receiving KKB's secretary letter at p 1 of exh AM–4 had referred the matter to the tribunal for the decision on the election result obtained at the first MAK–1 meeting instead of reprimanding the Board of KKB not to go ahead with the proposed second MAK–1 meeting.

[44] Anyway as things turn out, the disputes eventually reached the tribunal when the respondents/applicants referred them to the tribunal and the tribunal had decided on it. But the reference was made only after the second MAK–1 meeting had been held. In the circumstances, I hold that the Board had exceeded its authority when it decided to annul the result of the first MAK–1 meeting as to the election of delegates for the Delegates' Annual General Meeting and to proceed with the second MAK–1 meeting.

[45] However to be practical about it and in order to save time and cost, I shall order that the result of the election of delegates elected at the second MAK–1 meeting to stand as valid. I come to this decision giving consideration to my earlier finding that the result of the election at the first MAK–1 meeting was void. I also took into consideration that if the matter had been referred to the Registrar-General, it would be within his power and authority under the Act to order a fresh election to be conducted. The other consideration I take into account is that the Board of KKB had acknowledged that the election at the first MAK–1 meeting was tainted with irregularities and had in fact requested the Pengarah at Kuching to allow them to conduct a fresh election. Furthermore, I do not find any complaint respecting the election result reached at the second MAK–1 meeting.

A **[46]** For the above reasons, I will allow the appeal and set aside the tribunal's decision given on 10 April 2007.

Appeal allowed.

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Reported by Navit Kaur Randhawa

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